

**FCC DOCKET CC NO. 98-141**  
**AFFIDAVIT OF DOUGLAS W. TRABARIS**

---

8. On or about July 3, 1997, Ameritech Michigan unilaterally decided to cease paying reciprocal compensation for its customers' calls to TCG Detroit customers that happened to be internet service providers ("ISPs").

9. In a letter dated July 3, 1997 Ameritech informed TCG that it considered calls from its customers destined for ISPs (whose local dial tone service was provided by TCG Detroit) to be "non-local traffic," and therefore, not subject to reciprocal compensation under the TCG/Ameritech Interconnection Agreement. The letter is attached hereto as Exhibit A.

10. On August 21, 1997, after unsuccessful negotiations to resolve the dispute, TCG Detroit petitioned the MPSC for a declaratory ruling and resolution of the reciprocal compensation – ISP dispute. The proceeding was designated MPSC Case No. U-11502.

11. Thereafter, several other competitive local exchange carriers ("CLECs") filed complaints or motions to compel Ameritech to likewise make reciprocal compensation payments for calls from Ameritech customers to the respective CLECs' ISP customers. TCG Detroit's case before the MPSC was consolidated with the cases of the other CLECs.

12. After a full evidentiary hearing, in an Order dated January 28, 1998, the MPSC found in favor of TCG Detroit and the other CLECs and ordered Ameritech to:

- i) cease and desist from failing to pay reciprocal compensation in accord with the interconnection agreements; ii) immediately resume making reciprocal compensation payments in accord with its interconnection agreements; iii) pay all past due amounts

**FCC DOCKET CC NO. 98-141**  
**AFFIDAVIT OF DOUGLAS W. TRABARIS**

---

owed plus interest within ten days of the Order; and iv) pay TCG Detroit's attorneys' fees. The order, Brooks Fiber Communications of Michigan, Inc. et al. V. Ameritech Michigan, MPSC Case Nos. U-11178, U-11502, U-11522, U-11553, and U-11554 (Consol.) (Opinion and Order, Jan. 28, 1998), is attached hereto as an Exhibit B.

13. Rather than comply with the Commission's January 28, 1998 Order, on February 6, 1998, Ameritech filed suit in U.S. District Court, Western District of Michigan, against TCG Detroit, the other CLECs, and the Commissioners of the MPSC, seeking: i) federal court review of the MPSC's January 28, 1998 Order and ii) to stay enforcement of the MPSC's Order pending the court's review. The complaint and motion in Michigan Bell Telephone Company, d/b/a Ameritech Michigan v. MFS Intelenet of Michigan, Inc. et al., Case No. 5:98-CV-18 (W.D.Mich.) are attached hereto respectively as Exhibit C and Exhibit D.

14. On February 11, 1998, Federal Magistrate Robert Holmes Bell denied Ameritech's motion for a stay. The opinion of Judge Bell is attached hereto as Exhibit E.

15. On February 12, 1998, Ameritech again filed in federal court a motion for leave to deposit funds with the court and a motion for approval of a supersedeas bond and stay pending appeal.

16. On February 26, 1998, Ameritech made its first state court filing after the MPSC Order, when it filed a "protective" claim of appeal with the Michigan Court of Appeals (still pending).

**FCC DOCKET CC NO. 98-141**  
**AFFIDAVIT OF DOUGLAS W. TRABARIS**

---

17. On May 19, 1998, Ameritech again went to federal court and filed a motion for preliminary injunction.

18. On August 19, 1998, TCG Detroit filed in Michigan state court a Complaint for Mandamus Enforcement of the MPSC's Order and/or Injunctive Relief to enforce the MPSC's January 28, 1998 Order. TCG Detroit v. Michigan Bell Telephone Co., d/b/a Ameritech Michigan, File No. 98-88758-AW (Cir. Ct. of Ingham Cty. Michigan). The MPSC also intervened in support of TCG Detroit's mandamus action (in its September 10<sup>th</sup> filing).

19. On August 26, 1998, following extensive briefing by the parties, Federal District Court Judge Richard A. Enslen denied Ameritech's motions for: i) bond (2/12/98 filing), ii) stay (2/12/98 filing), and iii) injunction (5/19/98 filing). The Court's Order is attached hereto as Exhibit F.

20. Ameritech tried and failed twice to gain a court-ordered stay of the MPSC's Order. (See, supra, Paragraphs 14 & 16). Although Ameritech never obtained a stay of the MPSC's Order, it refused to comply with its valid and effective terms.

21. On September 10, 1998, the MPSC sued Ameritech in state court to obtain a writ of mandamus to force the company to comply with its Order. The MPSC's brief in support of its complaint is attached hereto as Exhibit G.

22. In a show cause hearing held on September 16, 1998, Ameritech admitted in open court that no stay of the MPSC's Order had ever issued from a court of competent jurisdiction. TCG Detroit v. Michigan Bell Telephone Co., d/b/a Ameritech

**FCC DOCKET CC NO. 98-141**  
**AFFIDAVIT OF DOUGLAS W. TRABARIS**

---

Michigan, File No. 98-88758-AW (Cir. Ct. of Ingham Cty. Michigan), Tr. at 7. The transcript is attached hereto as Exhibit H.

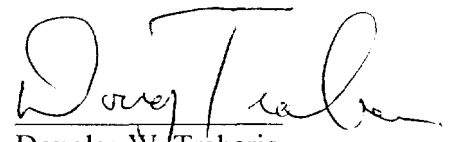
23. On September 17, 1998, Michigan Circuit Court Judge Richard D. Ball issued a Writ of Mandamus forcing Ameritech to comply with the MPSC Order.

24. On October 2, 1998, Ameritech began to comply with the MPSC Order by making partial payment of its outstanding reciprocal compensation debt.

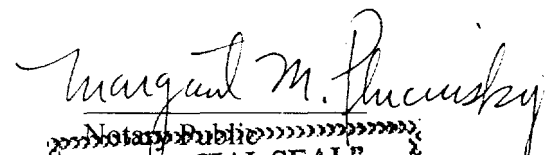
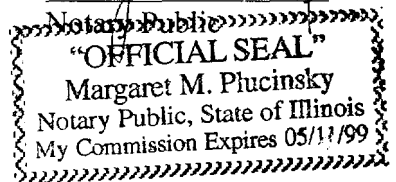
25. In sum, Ameritech only began to comply with the MPSC's Order after the issuance of the Writ, fourteen months after it unilaterally breached the valid and binding TCG/Ameritech Interconnection Agreement and seven months after a valid and binding MPSC Order confirmed the obligation of Ameritech under the TCG/Ameritech Interconnection Agreement and ordered compliance.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on October 12, 1998

  
Douglas W. Trabaris

SUBSCRIBED AND SWORN TO BEFORE ME this 12<sup>th</sup> day of October  
1998.

My Commission Expires:

May 11, 1999





July 3, 1997

Mr. Jim Washington  
Teleport Communication Group  
Vice President, Carrier Relations  
Princeton Technology Center  
429 Ridge Road  
Dayton, NJ 08810

Dear Mr. Washington:

It has come to our attention that Teleport Communication Group (TCG) has been billing Ameritech for Reciprocal Compensation for non-Local Traffic in error. Although Ameritech is not yet able to identify the total amount of such non-Local Traffic, Ameritech believes that TCG has been terminating traffic destined for Internet Service Providers and has been incorrectly billing Ameritech Reciprocal Compensation for this traffic.

As such, we feel it important to remind you of the billing terms regarding Reciprocal Compensation as stated in the Interconnection Agreements between our respective companies. According to Section 5.6.1 of the Interconnection Agreements, Reciprocal Compensation *only applies* to Local Traffic terminated on the terminating party's network. In addition, Section 5.6.2 specifically provides that Reciprocal Compensation arrangements in the Interconnection Agreement[s] *do not apply* to Exchange Access Service. Traffic destined for Internet Service Providers is Exchange Access Traffic and therefore under our Interconnection Agreement, Reciprocal Compensation does not apply to this type of traffic. Instead, this traffic would be subject to the Meet-Point Billing Arrangements in Article VI of the Interconnection Agreements had the FCC not exempted such traffic from access charges.

In order to rectify any Reciprocal Compensation billing discrepancies, it is imperative that we immediately discuss a process for identifying all non-Local Traffic for which either company has incorrectly paid Reciprocal Compensation to the other company. Once the amount of incorrect payments is identified in accordance with our Interconnection Agreements (Section 27.5.1), Ameritech expects that each party will reimburse or credit the other party for any incorrectly paid Reciprocal Compensation.

Mr. Jim Washington

July 3, 1997


Page Two

Ameritech estimates that approximately 68.61% of TCG's Reciprocal Compensation for Michigan and 74.28% of TCG's Reciprocal Compensation for Illinois' billings incorrectly include traffic destined for Internet Service Providers. On a going-forward basis, Ameritech will not pay that percentage of TCG's bills for Reciprocal Compensation in each state, based on that state's percentage. Of course, this would be subject to further adjustments once Ameritech is able to determine the actual amounts that have been incorrectly billed. Similarly, Ameritech will show an interim credit of a determined percentage on Ameritech's Reciprocal Compensation billings to TCG to reflect any amounts that Ameritech may have incorrectly billed to TCG. Pursuant to Article XVIII of our Interconnection Agreements, Ameritech is willing to discuss appropriate resolution of any disputed amounts, including entering into an appropriate escrow agreement upon mutually-agreeable terms and conditions under which both Parties would pay these disputed amounts into an escrow account pending a determination of the specific amounts that have been paid in error by either Party.

We hope that this clarifies the billing procedures for Reciprocal Compensation. If you have any questions about this matter, please call Paul Monti, at 312-335-4699 or Sue Springsteen, at 248-424-0758.

Sincerely,

*Thomas J. Lamb*

Thomas J. Lamb   
Vice President, Finance

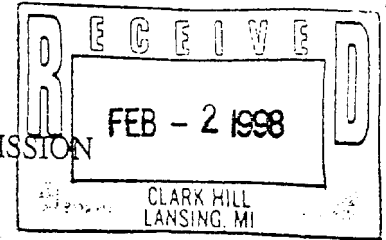
cc: General Counsel, TCG





STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*



In the matter of the application for approval of an )  
interconnection agreement between **BROOKS** )  
**FIBER COMMUNICATIONS OF MICHIGAN,** )  
**INC.,** and Ameritech Information Industry Services )  
on behalf of **AMERITECH MICHIGAN.** )

Case No. U-11178

In the matter of the request by **TCG DETROIT** for )  
clarification or interpretation of its interconnection )  
agreement with **AMERITECH MICHIGAN.** )

Case No. U-11502

In the matter of the complaint of **MFS INTELENET** )  
**OF MICHIGAN, INC.,** against Michigan Bell )  
Telephone Company, d/b/a **AMERITECH** )  
**MICHIGAN,** and request for immediate relief. )

Case No. U-11522

In the matter of the complaint of **BROOKS FIBER** )  
**COMMUNICATIONS OF MICHIGAN, INC.,** )  
against Michigan Bell Telephone Company, d/b/a )  
**AMERITECH MICHIGAN,** and request for )  
immediate relief. )

Case No. U-11553

In the matter of the application of MCI TELE- )  
COMMUNICATIONS CORPORATION for )  
arbitration to establish an interconnection )  
agreement with AMERITECH MICHIGAN. )  
\_\_\_\_\_ )

Case No. U-11554

At the January 28, 1998 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. John C. Shea, Commissioner  
Hon. David A. Svanda, Commissioner

### OPINION AND ORDER

These consolidated cases involve a dispute about whether Ameritech Michigan owes reciprocal compensation under interconnection agreements with competing providers of basic local exchange service for calls made by customers of Ameritech Michigan to Internet service providers (ISP) that are customers of those other providers. On July 3, 1997, Ameritech Michigan acted unilaterally to withhold reciprocal compensation. As of November 1997, the withheld payments amounted to \$6 million. The Commission concludes that Ameritech Michigan's interconnection agreements require it to pay reciprocal compensation for the disputed calls.

#### Procedural History

On August 21, 1997, TCG Detroit, Inc., (TCG) filed a request for declaratory ruling and application for resolution of the dispute in Case No. U-11502. It amended its filing on September 22, 1997. On September 18, 1997, MFS Intelenet of Michigan, Inc., (MFS) filed a complaint in Case No. U-11522. On October 7, 1997, MCI Telecommunications Corporation

and MCImetro Access Transmission Services, Inc., (collectively, MCI) filed a motion to compel reciprocal compensation in Case No. U-11554. On October 8, 1997, Brooks Fiber Communications of Michigan, Inc., (Brooks) filed a complaint in Case No. U-11553.<sup>1</sup>

A prehearing conference was held on October 23, 1997 before Administrative Law Judge George Schankler (ALJ). He granted the petition for leave to intervene of AT&T Communications of Michigan, Inc., (AT&T) in Case No. U-11553, consolidated the four cases, and recognized the Commission Staff (Staff) as a participant in all four cases.

On November 17, 1997, the ALJ denied the motion of Ameritech Michigan to compel discovery. On November 19, 1997, Ameritech Michigan filed an application for leave to appeal that ruling. On November 26, 1997, TCG, MCI, Brooks, MFS, and AT&T filed responses.

At a hearing on November 24, 1997, the ALJ granted the petition of BRE Communications, L.L.C., d/b/a Phone Michigan, to intervene in Case No. U-11553. On that same date, TCG, MFS, Brooks, MCI, and the Staff each presented the testimony of one witness, and Ameritech Michigan presented the testimony of two witnesses. Following cross-examination of the witnesses, the record closed. The record consists of 547 pages of transcript and 32 exhibits that the ALJ admitted into evidence.<sup>2</sup>

The parties filed briefs on December 12, 1997 and reply briefs on December 19, 1997.

With its initial brief, Ameritech Michigan also filed a motion for a stay. Because the Commis-

---

<sup>1</sup>On August 29, 1997, Brooks filed a motion in Case No. U-11178, the docket in which the Commission had approved its interconnection agreement with Ameritech Michigan, to compel payment of reciprocal compensation for ISP calls. Brooks' October 8, 1997 complaint encompasses the issues raised in the motion, which may therefore be dismissed as moot.

<sup>2</sup>The Commission finds it unnecessary to resolve the dispute about admission of Exhibits C-9 through C-14. The exhibits are cumulative and would not affect the Commission's decision.

sion had indicated that it would read the record, the ALJ did not prepare a proposal for decision.

Leave to Appeal and Request to Take Administrative Notice

Ameritech Michigan argues that the ALJ improperly denied its motion to compel discovery from the complainants and AT&T. Ameritech Michigan argues that each of the questions is relevant to the issues in the complaints or reasonably calculated to lead to the discovery of relevant evidence. Ameritech Michigan seeks to have the complainants and AT&T (1) identify all of the telecommunication services they provide to ISPs in Michigan, (2) provide copies of all agreements with ISPs related to revenue or expense sharing or reimbursement of costs they incur in terminating ISP traffic, (3) identify all of their ISP customers in Michigan, (4) provide copies of all correspondence and other documents exchanged between themselves and their ISP customers, (5) provide copies of all the pleadings they have filed in federal or other state jurisdictions involving reciprocal compensation for ISP traffic, (6) provide copies of all of their correspondence with state commissions on the subject of reciprocal compensation for ISP traffic, and (7) provide copies of all pertinent provisions of any interconnection agreement they have entered into involving reciprocal compensation and switched exchange access traffic.

The Commission affirms the ALJ's ruling on both procedural and substantive grounds. Procedurally, Ameritech Michigan served its discovery questions after the close of business on November 3, 1997, and responses were not due until at least five business days later, the day that Ameritech Michigan was required to file its testimony. Consequently, Ameritech Michigan filed its discovery requests too late to make any use of the responses in preparing its testimony. The ALJ properly refused to relieve the company of the consequences of its decision. In

addition, Ameritech Michigan filed its motion to compel before the responses were due. Its decision to do so necessarily prevented the motion from addressing any claimed deficiencies in the responses that the parties filed on November 10 and 11, 1997. The ALJ could properly deny the motion for that reason as well.

Substantively, the discovery requests are variously overly broad, seek information Ameritech Michigan should seek in another manner (if at all), and are not relevant to the issue in the complaints nor reasonably calculated to lead to the discovery of relevant evidence. The complaints raise the issue of Ameritech Michigan's contractual obligation to pay reciprocal compensation. The discovery at issue does not address that issue. The ALJ therefore properly denied the motion to compel and the related request to adjust the schedule.

On January 16, 1998, Ameritech Michigan filed a request that the Commission take administrative notice of two decisions from an arbitrator in Texas regarding the issue of reciprocal compensation for calls to ISPs in the context of proceedings pending before the Public Utility Commission of Texas. MCI, AT&T, Brooks, MFS, and TCG filed letters in opposition to that request. MFS and TCG also requested that the Commission take administrative notice of a federal District Court decision and two other state commission decisions, respectively.

The Commission denies all three requests. It is open to question whether the Commission may take notice of such matters. Further, no party has argued that the Commission must consider decisions from other jurisdictions in addressing the interconnection agreements at issue.

#### The Terms of the Agreements

The complainants argue that the express terms of the interconnection agreements define

calls to an ISP within the local calling area of the calling party to be local traffic for which reciprocal compensation is required. The agreements provide in part:

Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or [the Complainant] which a Telephone Exchange Service Customer originates on Ameritech's or [the Complainant's] network for termination on the other Party's network.

TCG Agreement, para. 5.6.1; MFS Agreement, para. 5.8.1; Brooks Agreement, para. 5.7.1; MCI Agreement, para. 4.7.1. The TCG agreement defines local traffic as "local service area calls as defined by the Commission." TCG Agreement, para. 1.43. The other agreements define local traffic as:

[T]hose calls as defined by Ameritech's local calling areas, as described in maps, tariffs, or rate schedules filed with and approved by the Commission as of the date of this Agreement.

MFS Agreement, para. 1.36; Brooks Agreement, para. 1.38; MCI Agreement, Schedule 1.2 (with minor wording variations).

Ameritech Michigan admits that the disputed calls are placed to a telephone number within the local calling area and that it bills its customer for the local call, Exhibit J-1, but Ameritech Michigan argues that the calls do not terminate on the other provider's network. It asserts that the calls instead terminate on the Internet for jurisdictional purposes and are therefore, as a matter of law, not local traffic and, as a matter of contract interpretation, not subject to reciprocal compensation. It asserts that the Federal Communications Commission (FCC) has consistently recognized these calls as exchange access traffic that is within the exclusive jurisdiction of the FCC, although it has exempted these calls from the requirement to pay access charges.

The interconnection agreements define switched exchange access service as follows:

[T]he offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services.

TCG Agreement, para. 1.65; MFS Agreement, para. 1.56; Brooks Agreement, para 1.57; MCI Agreement, sch. 1.2. Reciprocal compensation is not paid for such calls:

The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

TCG Agreement, para. 5.6.2; MFS Agreement, para. 5.8.3; Brooks Agreement, para. 5.7.2; MCI Agreement, para. 4.7.2.

The complainants respond that the calls are indistinguishable from local calls because the calling party uses a local seven-digit telephone number, the call terminates within the local calling area at the ISP's premises associated with that local number, and the caller is billed local charges for the call. Exhibit J-1. Further, they note that Ameritech Michigan treats the calls as local calls for purposes of call rating, billing, reporting, and separations allocations between interstate and intrastate jurisdictions. Exhibit J-1. They argue that a call to an ISP consists of two elements: a circuit switched call (the local call) and one or more packet switched connections to the Internet.

The Commission concludes that the terms of the agreements support the complainants' position. As a service matter, the calls terminate within the local calling area. 3 Tr. 201, 204. The disputed calls are made from one local number to another in the local calling area, and the agreements do not distinguish between calls based on the nature of the customer receiving the



call. As such, the calls are local traffic. Contrary to Ameritech Michigan's argument, calls placed to an ISP at a local number are not exchange access traffic because they do not relate to the origination or termination of toll service. Further, these calls are not among the listed switched exchange access services that are exempt from reciprocal compensation. The failure to include calls to ISPs in that list is indicative of the parties' intent. Consequently, the Commission concludes that, on their face, the interconnection agreements support the complainants' argument that the disputed calls are ones for which Ameritech Michigan owes reciprocal compensation.

#### Implementation of the Agreements

In its brief, Ameritech Michigan suggests that it would be improper for the Commission to consider matters outside the "four corners" of the agreements, although it suggests that the Commission may consider the longstanding precedent that ISP traffic is not local traffic. On the other hand, Ameritech Michigan says that "there is nothing in the 'four corners' of the Agreements that says in so many words whether calls destined for ISPs are subject to reciprocal compensation. If there were, this dispute would never have arisen." Ameritech Michigan's brief, p. 19. In its reply brief, Ameritech Michigan says that the Commission can look to evidence outside the agreements to aid in the interpretation of technical or trade terms. Ameritech Michigan's reply brief, p. 5.

As discussed above, the Commission concludes that the terms of the agreements *themselves* resolve the question and require Ameritech Michigan to pay reciprocal compensation for the disputed calls. As discussed below, matters outside of the "four corners" of the agreements also lead to that conclusion.

Ameritech Michigan argues that neither the Commission nor the FCC has ever classified these calls as local traffic. In fact, it asserts that the FCC has unequivocally classified these calls as exchange access service. It says that contracting parties must be presumed to have full knowledge of the state of existing law. Accordingly, it argues, it was unnecessary for the agreements to specify that calls to ISPs were not local because everyone knew that the FCC has unmistakably defined the calls to be exchange access traffic, which is explicitly excluded from reciprocal compensation under the agreements.

Ameritech Michigan's argument is wrong. During the negotiation of its interconnection agreement, Brooks indicated its view that calls to ISPs were local and, as such, subject to reciprocal compensation. 3 Tr. 260-263. In addition, when implementing the interconnection agreements (and before those agreements, its interconnection tariff), Ameritech Michigan billed reciprocal compensation charges to other providers for calls terminated to ISPs that were customers of Ameritech Michigan and paid reciprocal compensation to other providers for calls terminated to ISPs on their networks. For example, Ameritech Michigan has paid reciprocal compensation to Brooks, first under a tariff and later under an interconnection agreement, since March 28, 1995. 3 Tr. 240-241. In addition, Ameritech Michigan billed Brooks for calls originating on Brooks' network and terminating to ISP customers on Ameritech Michigan's network. 3 Tr. 259. Under Ameritech Michigan's argument, it, like all other providers, must be held to the knowledge that those calls were not local or subject to reciprocal compensation. Rather than concluding that Ameritech Michigan unreasonably believed that only it could recover "reciprocal" compensation for ISP calls, it is more reasonable to conclude that Ameritech Michigan, like the complainants, viewed those calls as local and subject to reciprocal

compensation. Similarly, it is more reasonable to conclude that Ameritech Michigan did not cease paying reciprocal compensation for the disputed calls to correct a past "mistake" or to return to the clear meaning of the agreements, but rather to implement a policy change that it found advantageous.

It is reasonable to conclude that Ameritech Michigan changed its interpretation of the agreements only when another Bell operating company raised the issue in its service territory and Ameritech Michigan realized that the balance of payments was against it. Ameritech Michigan claims that it was not until April 1997 that it became suspicious that other carriers were improperly billing it for reciprocal compensation for calls to ISPs. 3 Tr. 474. It seems more than coincidence that the issue became important to Ameritech Michigan just as another Bell operating companies raised the issue in another state. 3 Tr. 505-506. Otherwise, one must believe that despite all of the Ameritech Michigan employees who were involved in the negotiation and implementation of the interconnection agreements, and despite the fact the Ameritech Michigan itself has ISP customers, it was not until April 1997 that any employee realized that people might be using computers at home and at work to call local telephone numbers to obtain access to the Internet.

Furthermore, the claim that Ameritech Michigan became concerned about improper billing by other providers in April 1997 because of the imbalance in payments is undercut by the fact that the imbalance existed from the beginning of the implementation of the agreements. 3 Tr. 260-261, 534. Further, Ameritech Michigan's position requires the conclusion that Ameritech Michigan, knowing full well that calls to ISPs were not subject to reciprocal compensation and knowing the difficulty in determining which local calls were calls to ISPs,

deliberately designed a reciprocal compensation billing system that cannot identify and separate out the calls to ISPs that are not subject to reciprocal compensation, and did not inform the complainants of those facts.<sup>2</sup> 3 Tr. 531-532.

Ameritech Michigan's argument must be rejected for other reasons as well. First, Ameritech Michigan treats calls to ISPs at local telephone numbers as local calls for purposes of imposing local charges under its tariffs, despite its claim that those calls are like interexchange calls, which it does not count or charge for as a local call. Exhibit J-1. Second, Ameritech Michigan treats the calls as local for purposes of call rating, billing, reporting, and separations allocations between interstate and intrastate jurisdictions. Exhibit J-1. Third, despite its claim that it is improper to pay reciprocal compensation for any call to any information provider at a local telephone number and despite acknowledging that ISPs are not the only information service providers, Ameritech Michigan has not sought to implement its new policy any more broadly. 3 Tr. 531.

The Commission therefore concludes that Ameritech Michigan's conduct and implementation of the interconnection agreements fully support a conclusion that those agreements require reciprocal compensation for calls to ISPs.

#### FCC Jurisdiction

Finally, Ameritech Michigan argues that, although the issue in these cases has been framed as a dispute about the interpretation of the interconnection agreements, the agreements cannot resolve the issue because only the FCC can decide whether the calls are local. Ameritech

---

<sup>2</sup>As a result of this problem with its billing system, Ameritech Michigan continues to bill other providers for the reciprocal compensation that it claims is improper and then credits its bill to them based on estimates. 3 Tr. 531-532.

Michigan's position is that the FCC has already decided that these calls are not local, but rather are a form of access service for which the FCC has permitted the local exchange companies (LECs) to impose local charges while exempting the ISPs from the payment of access charges.

Ameritech Michigan acknowledges that the Commission has authority to resolve disputes about the interconnection agreements, but asserts that the FCC has exclusive jurisdiction to decide the one legal issue that is dispositive of this dispute. Therefore, it argues, for reasons of the Supremacy Clause, the FCC's exclusive jurisdiction, primary jurisdiction, noninterference with the FCC's jurisdiction in a pending docket, and administrative economy, the Commission must defer to the FCC and should stay these cases pending a decision in CCB/CPD 97-30, where the FCC has been asked whether these calls are local. Ameritech Michigan represents that the FCC should decide that issue shortly.<sup>3</sup>

The complainants dispute Ameritech Michigan's characterization of the FCC's prior actions. They assert that the FCC has classified ISPs as end-users, which means they do not purchase access service under interstate access tariffs and instead purchase local exchange service out of local tariffs. In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, released May 16, 1997, para. 344-348. They further argue that the FCC has explicitly recognized that reciprocal compensation can provide the mechanism for the LECs to recover the costs of transport and local termination of calls to ISPs, to which interstate access charges do not apply. In the Matter of the Implementation of Local Competition, First Report and Order, CC Docket No. 96-98, released August 19, 1997, para. 1033-1034. Further, they note that the

---

<sup>3</sup>At a hearing in Case No. U-11178 on September 24, 1997, counsel for Ameritech Michigan represented that a decision from the FCC was "likely" before the end of 1997 and expected "as early as November" 1997. Case No. U-11178, Tr. 43-44.

FCC has recently distinguished between the service used to connect to the ISP and the ISP's services:

We agree with the Joint Board's determination that Internet access consists of more than one component. Specifically, we recognize that Internet access includes a network component, which is the connection over a LEC network from a subscriber to an Internet Service Provider, in addition to the underlying information service.

When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's service offering.

In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, released May 8, 1997, para. 83 and 789 [footnote omitted].

In addition, the FCC has said:

We also are not convinced that the nonassessment of access charges results in ISPs imposing uncompensated costs on incumbent LECs. ISPs do pay for their connection to incumbent LEC networks by purchasing services under state tariffs. Incumbent LECs also receive incremental revenue from Internet usage through higher demand for second lines by consumers, usage of dedicated data lines by ISPs, and subscriptions to incumbent LEC Internet access services. To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.

Access Charge Reform order, supra, para. 346.

On the one hand, Ameritech Michigan seems to be arguing that only the FCC may decide how providers are to compensate each other for calls to ISPs and that, at least for now, the FCC has decided that ISPs should pay end-user charges, which permits Ameritech Michigan to charge local usage charges, among other things. On the other hand, apparently recognizing that its position means that there is no compensation due between providers for calls to ISPs, Ameritech

Michigan now argues that, if the Commission decides to proceed with a decision in these cases, it should direct the parties to implement some form of interim compensation mechanism modeled after meet-point billing arrangements, an alternative that Ameritech Michigan has only partially developed. That suggestion undercuts its argument that only the FCC is authorized to determine the proper payment for calls to ISPs. If the parties can agree to a compensation arrangement modeled after meet-point billing, it is not clear from Ameritech Michigan's argument why they should not be equally free to agree to reciprocal compensation, as they have already done.

Further, Ameritech Michigan's position depends on a conclusion that calls to ISPs cannot be separated into a local call and a subsequent communication with the information service provider. In another context, Ameritech Michigan has argued that information services are separate from the call made to access those services. 3 Tr. 163-164, 182-183.

The Commission concludes that it need not withhold a ruling at this time. The initial question in these cases is the interpretation of the interconnection agreements, a matter that the federal Telecommunications Act of 1996 (FTA) and Section 204 of the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., (MTA) place within the jurisdiction of the Commission. See Iowa Utilities Board v FCC, 120 F3d 753 (8th Cir. 1997).<sup>4</sup> As to the meaning of the FCC's prior rulings and pronouncements, the Commission is not persuaded that the FCC has ruled as Ameritech Michigan asserts. In fact, the FCC's more recent statements have moved away from the view upon which Ameritech Michigan's

---

<sup>4</sup>Ameritech Michigan's January 16, 1998 request that the Commission take administrative notice of two arbitration awards from Texas could be viewed as a concession that the states have authority to act on the question of reciprocal compensation to ISPs.

position depends. When the FCC rules in the pending docket, the Commission can determine what action, if any, is required.

Finally, it should be noted that the Commission's action prevents Ameritech Michigan from creating a class of traffic for which no compensation is due, an outcome that would be inconsistent with the FCC's intent:

[S]tate commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5) [of the FTA], consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges.

Local Competition order, supra, para. 1035.

#### Effect of Decision

Ameritech Michigan argues that accepting the complainants' position will have an extremely disparate economic effect on all local exchange carriers that originate calls to ISPs served by another local exchange carrier. It says that the originating carrier will receive at most a small flat rate for the call while the terminating carrier will receive a much greater timed reciprocal compensation charge. For example, it says, an hour call to the Internet would permit Ameritech Michigan to receive at most 6.2 cents while the terminating carrier would receive up to 90 cents in reciprocal compensation. 3 Tr. 408.

The short answer is that the issue should be addressed when negotiating or renegotiating an interconnection agreement, not by one party unilaterally imposing a solution on the other party. Furthermore, Ameritech Michigan fails to acknowledge that the same disparity results from an hour long telephone conversation between two customers. It also fails to acknowledge that, for



short duration calls, whether to an ISP or another customer within the local calling area, Ameritech Michigan's charge to its customer can exceed the reciprocal compensation charge. Finally, Ameritech Michigan has informed the Commission that its basic local exchange rates are restructured, which means that the company has concluded on the basis of cost studies that its revenues for the service cover its costs. Presumably, local calls to ISPs are included within those studies because the company says on this record that it presently cannot separate out those calls.

#### Remedy

The Commission concludes that Ameritech Michigan has unlawfully withheld reciprocal compensation since July 3, 1997. The Commission directs Ameritech Michigan to cease and desist from violating the terms of the interconnection agreements. Therefore, Ameritech Michigan shall immediately resume reciprocal compensation payments in accordance with the agreements and shall, within 10 days, pay the past due amounts, with interest as specified in the agreements. Furthermore, to make whole the complaining parties, as Section 601 of the MTA requires, the Commission orders Ameritech Michigan to pay the complainants' and intervenors' attorney fees. MCL 484.2601; MSA 22.1469(601). Finally, the Commission concludes that, under the circumstances, a fine is not required.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.;